IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14858 of 2003
with
CIVIL APPLICATION 11 of 2005
in
SPECIAL CIVIL APPLICATION No 14858 of 2003
with
SPECIAL CIVIL APPLICATION No 15084 of 2003
to
SPECIAL CIVIL APPLICATION No 15181 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : YES

ACTION COMMITTEE FOR RESOLVINGGUJARAT SALT MANUFACTURES
Versus
UNION OF INDIA

Appearance:
1. Special Civil Application No. 14858 of 2003
MR KS NANAVATI WITH MR KD GANDHI
FOR NANAVATI ASSOCIATES for Petitioner No. 1-2
MR JJ YAJNIK for Respondent No. 1-5
MR AD OZA, Ld. GP for Respondent No. 6

2. Special Civil Application No. 15084 of 2003
NANAVATI ASSOCIATES for Petitioner No. 1
MR JJ YAJNIK for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 12/01/2005

ORAL JUDGEMENT

1. The short facts of the case are that the petitioners are salt manufacturers including the Action Committee for resolving the problem of Gujarat Salt Manufacturers, who were served with various demand notices by Railway Department of the Union of India respondent herein. The perusal of the demand notices shows that the Divisional Railway Manager (Commercial) at Rajkot called upon the concerned manufacturer, who is original consignor to pay penal freight, unloading charges, detention charges in exercise of power under Section 73 of the Railways Act 1989 (hereinafter referred to as the "Railways Act"). It has been stated in the said communication of demand notices that the consignment was weighed en route at Virangam Railway Weigh-bridge and the overloading was found and the charges are to be recovered for the excess weight and the goods were off-loaded at Virangam itself. The aforesaid aspect is common in respect of all the salt manufacturers, who have received the demand notices and have preferred these petitions. It further appears that the said demand notices pertain to various periods from 1999 to 2001 and there is no dispute on the point that the actual recovery is not effected before the delivery of the goods at the destination station, because it is an admitted position that such demand notices are issued after the goods are delivered at the destination to the consignee or the endorsee.

2. It appears that initially the aforesaid demand notices were challenged by the petitioners herein in the proceedings of SCA No.8939/2001 and other allied matters. In the said petitions this Court (Coram: D.A.Mehta, J.) as per the order dated 8.7.2002 finally disposed of the matter by observing at para 4, 5 and 6 as under:

"4. It is agreed between the parties that the petitioners in each of these 4. It is agreed between the parties that the petitioners in each of these petitions shall make a representation

against the demand notice, which is the subject matter of dispute in this Special Civil Application and other group of petitions, to the Divisional Commercial Manager (D.C.M.), Vadodara within a period of 30 days from today. It will be open to each of the petitioners to raise all the contentions raised in the petition, including the grievance regarding the tare weight of the wagon and weighment made on the weigh bridge. The D.C.M. shall afford personal hearing to the petitioner, if so demanded. After hearing the petitioner and taking into consideration the representation of the petitioner, the D.C.M. shall pass fresh speaking orders containing reasons regarding the claims / demands made in accordance with law and the provisions of the Railway Manual. The recoveries, if any, shall be made only on the basis of such fresh orders which are to be passed. In the meanwhile, if any recovery has already been effected pursuant to the impugned demands, such recovery shall be subject to adjustment and set off. Pursuant to the fresh order that may be made any recovery shall be effected only after giving the benefit of adjustment as aforesaid, and in case excess amount has been recovered or no amount is recoverable, then it shall be refunded by the Railway Administrator. The refund, if any, shall be made within 30 days from the date of such fresh order, which shall be passed by the D.C.M. within 90 days from the date of receipt of representation made by the petitioner. It is further clarified that recovery, if any, shall be only for the due and recoverable amount after adjustment of amount already recovered.

5. Each petitioner undertakes that it will load the goods only in the bags of standard size as approved by the Salt Commissioner from time to time. If the goods are so loaded in bags of standard size then the Railway Administrator shall carry out test check at the loading station only for the purpose of checking overloading, if any.

6. Upon each of the petitioners making representation within the stipulated time as aforesaid, no recovery shall be made pursuant to the demand notices already issued till fresh orders are passed by the D.C.M. In case an adverse order is passed, the same shall not be

enforced for a period of 30 days from the receipt of the order."

3. It appears that in the earlier proceedings of SCA No.8939/2001 and allied matters, the aforesaid demand notices were challenged on the ground, inter alia, that no opportunity of hearing was afforded by the Railway Authority before taking decision to recover the charges under Section 73 of the Railway Act. It is under these circumstances on account of the agreement of the parties, this Court, as referred to hereinabove, directed for giving of opportunity of hearing and of passing fresh orders.

4. It appears that thereafter, the Action Committee for resolving the problems of Gujarat Salt Manufacturers, who have preferred SCA No.14858/2003 preferred application for giving opportunity of hearing and with a view to have the clarification in this regard MCA No.983/2002 in SCA 8939 was preferred by the aforesaid Action Committee and this Court (Coram: D.A.Mehta, J.) as per order dated 30.8.2002 observed that in case the petitioners do not want to represent themselves personally before the respondent Authority at the time of hearing, it will be open to such petitioners to grant authority to its representatives who shall represent the case before the respondent Authority and it appears that thereafter as per the Railway Authority the opportunity was given, whereas the case of the petitioners is that the opportunity of hearing was not given to the representative or to the Action Committee. In the meantime, on 28.3.2003, the order has been passed by the Sr. Divisional Commercial Manager, Vadodara in pursuance of the directions given by this Court for passing a fresh order and it has been observed that the demand notices of penalty is maintained. It is the case of the petitioners that review application was preferred which also has been rejected as per the order dated 27.5.2003 by the concerned Officer, who earlier passed the order dated 28.2.2003 and also the earlier demand notices. In all the group of petitions there is difference of the dates of consignments, the quantum of overload and the charges to be recovered, otherwise they are common points on the aspects that - (i) the charges are sought to be recovered on the ground of overloading from forwarding station; (ii) the excess goods were off-loaded at Virangam Railway Station; (iii) it is the case of the Railways that en route weighing was made at Virangam Railway Station since there is no facility of Railway Weigh-bridge at the forwarding station from where the wagons were loaded.

5. One additional aspect which is contended in the present group of petitions by the petitioners herein is that as per the State Authority - respondent No.6 herein, the weigh-bridge of the Railway at Virangam Station was inspected on 3.8.2001 and it was found to be defective as per the State Authority and, therefore, the seals were applied. However, there is no dispute on the point that the Railway Authority, thereafter, preferred Special Civil Application No.6883/2001 before this Court challenging the action of the State Authority for sealing of the weigh-bridge and as per the order passed by this Court in the said Special Civil Application the seals are removed and the SCA No.6883/2001 is pending as on today.

6. I have heard Mr.K.S.Nanavati, learned Counsel appearing for the petitioners, Mr.Yagnik, learned Counsel appearing for the Railway Authority and Mr.A.D.Oza, learned GP appearing for the respondent No.6 State Authority.

7. Mr.Nanavati, learned Counsel appearing for the petitioners raised the contention that power under Section 73 of the Act can be exercised before the delivery of the goods and not thereafter and, therefore, he submitted that the impugned orders of issuing demand notices and the subsequent weighment by fresh order is beyond the scope and ambit of Section 73 of the Act. To consider the said submission, it would be required to consider the scheme of the provisions of Railways Act, more particularly qua the carriage of goods. Section 72 of the Act provides for maximum carrying capacity for the wagons and trucks. As per Sub-Section (1) of Section 72, the gross weight of the wagon should not exceed the limit as may be fixed by the Central Government for the class of axle under the wagon or truck. Sub-Section (2) of Section 72 provides that subject to the limit fixed under sub-section (1), every railway administration shall determine the normal carrying capacity for every wagon or truck in its possession and shall exhibit in words and figures the normal carrying capacity so determined in a conspicuous manner on the outside of every such wagon or truck. Sub-section (3) of Section 72 provides every person owning a wagon or truck which passes over a railway shall determine and exhibit the normal carrying capacity for the wagon or truck in the manner specified in sub-section (2). Sub-Section (4) of Section 72 of the Act provides that if a railway administration considers it necessary, it may specify the carrying capacity of any specified class of goods or any class of wagon or truck and perusal of the other Sub-sections shows that the same may be for excess of the normal capacity, but it has to

be not more than the maximum capacity fixed by the Central Government under Sub-Section (1). Sections 73 and 83 of the Act which are relevant for the purpose of deciding the petition read as under:

73. Punitive charge for overloading a wagon.
Where a person loads goods in a wagon beyond its permissible carrying capacity as exhibited under sub-section (2) or sub-section (3), or notified under sub-section (4), of Section 72, a railway administration may, in addition to the freight and other charges, recover from the consignor, the consignee or the endorsee, as the case may be, charges by way of penalty at such rates, as may be prescribed, before the delivery of the goods:

Provided that it shall be lawful for the railway administration to unload the goods loaded beyond the capacity of the wagon, if detected at the forwarding station or at any place before the destination station and to recover the cost of such unloading and any charge for the detention of any wagon on this account.

83. Lien for freight or any other sum due. (1)
If the consignor, the consignee or the endorsee fails to pay on demand any freight or other charges due from him in respect of any consignment, the railway administration may detain such consignment or part thereof or, if such consignment is delivered, it may detain any other consignment of such person which is in, or thereafter comes into, its possession.

(2) The railway administration may, if the consignment detained under sub-section (1) is -
(a) perishable in nature, sell at once; or
(b) not perishable in nature, sell, by public auction, such consignment or part thereof, as may be necessary to realise a sum equal to the freight or other charges:

Provided that where a railway administration for reasons to be recorded in writing is of the opinion that it is not expedient to hold the auction, such consignment or part thereof may be sold

in such manner as may be prescribed.

(3) The railway administration shall give a notice of not less than seven days of the public auction under Cl. (b) of sub-section (2) in one or more local newspapers or where there are no such newspapers in such manner as may be prescribed.

(4) The railway administration may, out of the sale proceeds received under sub-section (2), retain a sum equal to the freight and other charges including expenses for the sale due to it and the surplus of such proceeds and the part of the consignment, if any, shall be rendered to the person entitled thereto."

8. It would be profitable to refer to certain observations of the Apex Court in case of "Jagit Cotton Textile Mills v. Chief Commercial Superintendent, N.R. and Others", reported in 1998(5) SCC, 126. In the aforesaid case, while considering the contention of the Consignee for enabling power of the Railway to recover the amount for overloading at paragraphs 40, 41, and 42 it has been observed by the Apex Court as under:

"40. It is to be noticed that the second part of Rule 161-A speaks of discovery of the overweight at the booking point or en route or at the destination and recovery of the penal charge therefore for the entire distance from the booking point to the destination. The rule-making authority must, in our opinion, be deemed to have been aware that title in the goods might have passed to the consignees in several cases after the loading or after the weighment and before the actual delivery of the goods to the consignee such as where the railway receipt is delivered to the consignee against the receipt of price. In our view, the second part of Rule 161-A is quite wide and unrestricted and can be treated as permitting recovery of the penal charges "from the consignor or consignee or the endorsee, as the case may be", though these words are not expressly used in Rule 161-A. That is how the Railways becomes entitled to recover the penal charges from the consignee also even under the old Act.

41. Learned counsel for he consignees, Shri Pankaj Kalra invited our attention to the

decision of this Court in Director of Enforcement v. M.C.T.M. Corpn. (P) Ltd. to contend that the "delinquent" is the consignor and hence the consignee cannot be made to pay the penal charges. That case was concerned with the question whether for purposes of proceedings under Section 23(1)(a) of the Foreign Exchange Regulation Act, 1947 the Department had to prove mens rea in cases involving breach of Section 10 of the said Act. It was held that the "delinquency" of the defaulter by reason of wilful contravention of Section 10 had itself established his "blameworthy" conduct and it was not necessary to prove any guilty intention. It was held that officers of the Enforcement Directorate were acting as adjudicators and not as judges of criminal courts and they determine the liability of the contravener for breach of his "civil obligations" laid down under the Act and impose a "penalty" for the breach of the said obligations as laid down under the Act. In that context it was observed that the word "penalty" is a word of wide significance, sometimes it means recovery of an amount as a penal measure in civil proceedings, or an exaction which is not compensatory in character. Reference was made in that case to Corpus juris Secundum, (Vol. 85, p.580, para 1023), to the effect that a "penalty" can be imposed for a tax delinquency which is a civil obligation, entailing remedial and coercive processes, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for violation of criminal or penal laws. Learned counsel also referred to N.K. Jain v. C.K. Shah and Pratibha Processors v. Union of India as to the meaning of penalty. The former case arose under Employees' Provident Funds etc. Act, 1952 and the latter under the Customs Act, 1962. Other decisions relating to strict construction of penal statutes were also referred to. It was contended that when the "delinquent" is the consignor and if Section 73 and Rule 161-A permit punishing the consignee, the said provisions must be held to be in violation of Article 14 of the Constitution of India.

42. In our view, these contentions are not tenable. As has been noticed in our discussion on Points 1 and 2, the railway statutes define "maximum carrying capacity", "normal carrying

capacity" (to be marked on the wagon); and the "permissible carrying capacity". No wagon can be loaded beyond the maximum carrying capacity. The wagon could not ordinarily be loaded beyond the normal carrying capacity or up to any upward variation thereof and this limit is called the permissible carrying capacity. Section 73 of the new Act and Rule 161-A of the old Rules permit loading in excess of the permissible carrying capacity without any penal charges, now up to a limit of 2 tones. (Earlier it was up to 1 tonne.) What is now subjected to a penal charge is the excess over and above the permissible level above stated which is always below the maximum limit. In our view, this levy under Section 73 of the new Act and the old Rule 161-A is intended for dual purposes - one is to see that the gross weight at the axles is not unduly heavy so that accidents on account of the axles breaking down, could be prevented. The other reason behind the collection is that, inasmuch as the wagon has carried such excess load up to the destination point at the other end, the replacement cost of the coaches, engines or rails or of repairs to the bridges be covered. In our view, the extra rate is a higher rate, i.e. something like a surcharge for the excess load, to meet the said expense. Therefore, we do not think that any principle of "delinquency" is ingrained in this levy as in the case of breach of civil obligations under the FERA or Customs Act or the Employees' Provident Funds Act. Those cases involved penalties for breach of the Acts and were not concerned with charging a person for services rendered nor with an extra charge for services which involved extra strain to the property of the bailee who had rendered the service. Obviously the Railway Board has kept these aspects in mind while collecting these charges. There is therefore no violation of Article 14. Further, the question of reasonableness of the quantum of any such extra rate cannot be challenged before us and the appropriate forum therefore is the Railway Rates Tribunal. Rule 161-A can therefore, be resorted to for collecting these penal charges from the consignee also. After all, the consignee had received delivery of the overload goods and used the same for their business, commercial or industrial purposes. For the above reasons, a statutory provisions like Section 73 or Rule

161-A which permits levy on such a consignee cannot, in our view, be said to be arbitrary or unreasonable in the context of Article 14."

9. Therefore, in view of the aforesaid observations of the Apex Court, it appears that the recovery of the amount for overloading is of compensatory in nature and cannot be equated with the penalty which may be imposed for breach of the statutory provisions. It also appears that with a view to ensure safety of all railway tracks, wagons itself and other functioning connected therewith, no wagon should be loaded with goods exceeding the normal carrying capacity or permissible carrying capacity and such overloading must be prevented. Any loading of the goods in a wagon exceeding the normal or permissible capacity, if made, may result into damage to the axile of railway tracks, brake down etc., and, therefore, the charges which may be recovered under Section 73 of the Act are like extra higher rate i.e. something like surcharge for excess load to to meet with the said expenses as observed by the Apex Court and the principles of delinquency in the matter of levying of charges cannot be equated with the civil consequences which may arise on account of breach of the statutory provisions of other enactment like FERA, Customs Act, Employees P.F. Act. Even otherwise also, when the goods are carried by Railways as carrier like other agency carrying goods, if the overloading is to result into damage to the carrier itself, recovery of extra charges by the agency of carrier is not a principle unknown and such charges are recoverable. Since the functioning of the railway administration is governed by the statutory provisions, Section 73 expressly authorises for collection of such charges, but merely because the language used is "punitive charges or by way of penalty" it will not carry the same degree of observance of principles of natural justice as may be required in the cases, where there are enabling powers with the authority to impose penalty for breach of the statutory provisions. As such the punitive charges as contemplated under Section 73 of the Act for overloading of a wagon can be said as the charges/rates for extra load material. Section 2(35) defines the rate which would include in fare, freight or any other charge for the carriage of any passenger or goods. Therefore, the applicability of the penal rate or charging of the penal rate in case of overloading are the charges which the railway may charge in case of overloading, but they cannot be said as fully simpliciter penalty like penalty for breach of any statutory enactment or statutory provisions. The aforesaid becomes apparent from the provisions of Section 83 of the Act, which authorises the

Railways to exercise the right of lien for the freight or any other sum due which would include the recovery of penal charges in case of overloading. The provisions of Section 83 made by the legislature authorising the right of lien further strengthens the position that the penalty charges for overloading are only by way of additional compensatory measures and not as that of imposition of penalty for breach of any statutory provisions or enactment.

10. It is true that as expressly provided under Section 73 of the Act, the language used by the legislature is "before the delivery of the goods" and, therefore, one of the modes provided for recovery of punitive charges for overloading of the wagons would be of before the deliver of the goods. As per the proviso to Section 73 the railway administration has power to unload the goods loaded beyond the capacity of the wagon, if detected at the forwarding station or at any place before the destination station and to recover cost for such unloading and any charge for detention of any wagon and, therefore, it cannot be said that once the goods are already delivered, even if there was a case for overloading, the punitive charges are not recoverable at all by the railway administration from the consignee or consignor or endorsee as the case may be. However, if the goods are already delivered at the destination point and any charges are to be recovered by railway as per Section 73, such right of recovery shall be subject to additional measure of right of lien under Section 83 in respect to the same consignor or consignee or endorsee. If the situation arises to the extent that the Railway administration is not in a position to exercise the right of lien, then in that case as per the Scheme of the Act there is no express enforcement provided for recovery of such punitive charges as contemplated under Section 73 and the option available to the railway would be for recovering the amount by resorting to normal remedy. Therefore, Mr.Nanavati is not right in submitting that the demand notices are ultra vires to the scope and ambit of Section 73 of the Act as the goods are already delivered. Even after the delivery of the goods, the charges for overloading if ultimately found, are recoverable by the railways from the person concerned either by exercising the lien as contemplated under Section 83 or any other remedy by resorting to the normal mode of recovery of the amount. Therefore, the said contention of Mr.Nanavati that the action is ultra vires or beyond the scope of Section 73 of the Act cannot be accepted. However, the aforesaid would be subject to the rider that in the event the right of lien is to be

exercised by the railway authority against the person concerned and if the person concerned is aggrieved of such action on the part of the railway authority, it would be for such person concerned to resort to appropriate proceedings before the appropriate forum and to establish that such punitive charges are not recoverable for overloading and, therefore, no lien can be exercised by railway administration. The aforesaid would be in a matter where the railway has accepted the goods or the wagons are loaded on "said to contain" basis. As such the situation of recovering punitive charges for overloading of the wagon would arise only in the case where goods are not weighed or checked by railway authority at the time of loading and the wagons are allotted for loading to the consignee and the railway receipt is on the basis of "said to contain". As per Section 65(2) of the Act the railway receipt is the prima facie evidence of the weight, but as per the proviso of the said Sub-section (2) of Section 65 in case of consignment in wagon loaded or train and the weight or packet is not checked by railway servant authorised in this behalf, a statement to that effect is recorded in the receipt by him, then the burden for proving the weight or the number of packets, as the case may be, shall lie upon the consignee or the consignor or the endorsee. Therefore, if the wagons are loaded and the railway servant authorised in this regard has not checked and the railway receipt is issued on the basis of "said to contain" the burden would lie upon the consignee or consignor or endorsee as the case may be and, therefore, unless there is a prohibitory order of the competent forum for preventing the railway from exercising the right of lien under Section 83 of Railway Act the punitive charges decided as per Section 73 of Railway Act are recoverable by exercising the right of lien.

11. Mr.Nanavati, learned Counsel appearing for the petitioners raised the contention that the impugned demand notices or the penalty by way of demand notices are imposed without giving any opportunity of hearing to the petitioners concerned or the consignor concerned as the case may be. In support of the said submission, he also contended that the petitioners are not intimated at what point of time the weight has been recorded at railway weighbridge at Virangam or at what point of time the off-loading has taken place. He also submitted that even before the disposal of the goods no intimation is given to the petitioners and in any event the credit of the amount so realised from the off-loaded goods are also not given by the railway administration to the petitioners. In support of his submission, he relied

upon the decision of Gauhati High Court in case of "M/s.Salt Marketing Centre Guwahati v. Union of India and Others," reported in AIR 1996 Gauhati, 36 for contending that if the opportunity of hearing is not given the imposition of penalty would be bad in law. He also relied upon the decision of Jarkhand High Court in case of "Jyoti Enterprises v. Union of India and ors.", in matter No.3191/2000 and he has produced the copy of the said decision of Jarkhand High Court and contended that if the requirement of principles of natural justice are not followed the power under Section 73 of the Act would not be attracted and no penalty can be made recoverable and it is further submitted that if the exercise of power for recovering of penalty charges cannot be maintained, even subsequently lien cannot be exercised.

12. On behalf of the respondent Railway Authorities, it has been submitted that the opportunity of hearing has been given as directed by this Court as per the order dated 8.7.2002 which is of course a post decisional hearing, but it has been submitted that as the post decisional hearing is already given and the matter is already considered by the authority, there is no the question of pre-decisional hearing now the present case would arise at all. It has also been submitted by Mr.Yagnik that since en route weighing of the wagon was undertaken at Virangam it was not possible for the railway administration to keep the wagon in stagnant position since it may result into heavy loss and the intimations were given to the concerned authorities that there was overloading of the wagon and the excess goods are off-loaded. Mr.Yagnik also submitted that weighing of wagon is by electronic method and if overloading is found, the charges are recoverable and, therefore, this Court may consider the matter on merits as to whether the impugned orders confirming the earlier demand notices can be maintained on merits, more particularly when the opportunity of hearing is already given and the railway authority has examined the matter and has found that the demand is just and proper.

13. On the question of applicability of the principles of natural justice, the law is settled by now and it would vary from facts of each case and there can not be a straight-jacket formula for the applicability of the principles of natural justice. If the pre-decisional hearing is to defeat the very purpose of exercising the power by the authority, it may not be given or if giving opportunity of hearing is to frustrate the maintenance of public interest or leaves room to the person who may be

given opportunity to misuse the position, then also the pre-decisional hearing may not be given. In a matter of exercising power under contractual obligations even before termination of the contract, it is not necessary that in every case the opportunity of hearing must be given, but it would either depend upon the terms and conditions of the contract or would depend upon the consequence which may arise if the opportunity of hearing is given by the authority before termination of the contract. In a matter where the opportunity of hearing is already given, may be by way of post decisional hearing, Court may not entertain the contention of the person making complaint before the Court that the opportunity of hearing is not given. When earlier SCAs were filed by the petitioners for challenging the very demand notices, this Court upon the agreement of both the parties namely the petitioners herein as well as the Railway Authority directed for giving opportunity of hearing to the petitioners and for passing of fresh orders. Therefore, once while challenging the very demand notices, the petitioners accepted for giving of opportunity for passing of fresh order, it would not be open to the petitioners to now contend that the order is bad since no pre-decisional hearing is given.

14. The question which incidently arise for considering is regarding the scope and ambit of power under Section 73 of the Act and as to whether there is any applicability of principles of natural justice and if yes, to what extent. As observed earlier, the punitive charges though titled as penalty under Section 73 cannot be equated with the penalty to be imposed in respect to any breach of any statutory provisions or all other enactment. As per the language used by the Apex Court in case of "Jagjit Cotton Textile Mills" (Supra) they are like higher rate i.e. something like a charge for the excess load. But if there is a contingency resulting into excess load or overloading of the wagons, the consequence is enabling power to the railway administration to charge such higher rate and resultant liability of the consignor, consignee or endorsee, as the case may be, to pay such higher rate. Since charging of such higher rate as per Section 73 is to result into additional financial liability on the part of consignee, consignor or endorsee as the case may be, it would not be proper to hold that there is no applicability of the principles of natural justice at all. By now, it is well settled that even if the statute does not provide for express applicability of the principles of natural justice such principles of natural justice are to be read, if exercise of power is to result into any

additional financial consequence. Further, even if the provisions of Section 73 of the Act are considered as it is, by proviso it has been expressly provided that it shall be lawful for the railway administration to unload the excess load beyond the capacity of the wagon if detected at the forwarding station or at any place before destination station and to recover the cost of such unloading and any charge for destination of any wagon on this account. Therefore, such powers are also for authorising the railway administration to off-load the goods from the wagon if it is so detected either at the forwarding station or at the place before the destination station and it also enables the railway administration to recover the cost of such unloading and any charge of destination of any wagon on this account. Therefore, the stage of off-loading of the goods from the wagon is one of the contingencies which may arise during the period when the goods are already loaded in the wagon, but before it reaches to the destination station, it is so detected by the railway administration that there is overloading of the goods beyond the capacity of the wagon and such contingencies which may arise in any case prior to recovery of the punitive charges before the actual delivery of the goods. In this regard, it would be necessary to refer to the statutory rules framed by the Central Government namely; The Railways (Punitive Charges for Overloading of Wagon) Rules, 1990 and also Weighment of Consignments (In Wagon-load or Train-load) Rules, 1990. It is required to be recorded in this group of petitions of this Court is considering the issue of the loading or overloading or off-loading of the wagon load and all these matters pertain to goods loaded to its fullest extent in a wagon or more than one wagon by the concerned consignor. The aforesaid Rules of 1990 providing for punitive charges for overloading do not expressly provides for any procedure to be followed for recovery of the punitive charges prior to coming to the conclusion by the railway administration that there is overloading in wagon beyond the permissible carrying capacity. Therefore, it can be said that the Rule making Authority has framed the Rules only to the extent of fixation of the charges and did not provide for any procedure to be followed before recovery of punitive charges for overloading. However, the said Rules gives an option to the consignee or endorsee of the consignment if he has reason to believe that the wagon offered to him does not contain the quantity of goods entrusted for carriage. Of course such option available to the consignee or endorsee of wagon load is subject to the provisions of Rule 4 which authorises the Railway Administration to disallow such request if the

circumstances as mentioned in Sub-Rule 1 to 3 exist. Therefore, if a contingency has arisen as provided in proviso to Section 73, in the event if it is so detected by the railway that the goods are loaded beyond the capacity of the wagon and if it is intimated by the railway to the consignor, the steps may be taken by the consignor to intimate to the consignee for opting the weighment of the consignment as per the Rules of 1990. Similar will be the situation in case the railway administration has off-loaded the goods exceeding the capacity of the wagon at any stage before it reaches to the destination station. Even when the punitive charges are proposed to be recovered before delivery of the goods, such option may be exercised by the consignee or the endorsee of the wagon. Therefore, in view of the aforesaid, it cannot be concluded that there is no applicability of the principles of natural justice whatsoever. However, at the same time, the degree of applicability of principles of natural justice in the matter of recovery of punitive charges as per Section 73 cannot be stretched to the extent as they are applicable in case of imposition of penalty for breach of any statutory provision, but they can rather be equated in the matter where the transaction is in the realm of contractual obligation. Had it been a matter pertaining to contractual obligation between the private parties such applicability of principles of natural justice may not arise at all but since the railway administration is a Department of Government of India, it cannot be held that it is not expected to act in just, fair and reasonable manner even in the matter of contractual obligations. As such functioning in just, fair and reasonable manner would itself attract applicability of some degree of principles of natural justice and in view of the aforesaid statutory Rules giving option to the consignee or weighment of the consignment loaded at the destination station, if the principles of natural are completely excluded the effect may result into nullifying the effect of the Statutory Rules of 1990 for weighment of the consignment at the destination station and, therefore, also it would be difficult to conclude that there is no applicability of principles of natural justice at all before recovery of punitive charges from the consignee or endorsee or the consignor as the case may be.

15. The next aspect which may be required to be considered is the degree of applicability of the principles of natural justice and at what stage. To properly consider the said aspect if the scheme is considered it appears that when the wagons are allotted

to the consignor for loading if the conditions of wagon is such which may result into damage to the goods or which may result into any additional financial burden to the consignor, he may reject the wagon and for such purpose the option available to the consignor would be as per the railway manual. Similarly, when the goods are loaded it is open to the railway administration to insist for proper and strict implementation of the procedure to be followed as per railway manual. If the goods are to be loaded in the bags of specified size, it is for the railway administration to ensure and compare the weight of the goods loaded in the wagon. Even as per the railway manual Clause 1422 the weighment can be checked by weighing of 10% to 20% of the goods and thereafter to compare to the whole lot provided the consignment is in the uniform standard size bags. Much grievance is raised by the learned Counsel appearing for both the sides namely that on behalf of the petitioners, it has been submitted that the goods were despatched in the bags of standard size, whereas Mr.Yagnik for the railway authority not only disputed the position, but he submitted that even after the earlier order passed by this Court in SCA No.8939/2001 and allied matters dated 8.7.2002, the goods are not loaded in the bags of standard size as approved by the Salt Commissioner so authorised. Mr.Yagnik, learned Counsel appearing for the railway authority made statement at the bar that the area from which the salt is being loaded is having about 50% of the production of salt of the country and every day about 900 wagons are loaded of salt. He also submitted that keeping in view of the aforesaid aspects if the goods are not loaded in the uniform standard bags as provided by the Salt Commissioner, it is practically impossible for the railway administration to weigh the goods loaded in the wagon. He further made statement at the bar on behalf of the railway administration that as per the instructions issued by the Central Government salt is one of the essential commodities and the supply cannot be interrupted on the ground that the consignment is not loaded in the bags of standard size, because the wagons are expected to reach at destination station well in time and, therefore, as and when the wagons are loaded R.R. is issued on the basis of the "said to contain" with a view to see that speed is maintained in loading and supplying goods at the destination station. It is not even the case of the petitioner that the goods were first weighed and there after loaded in the wagon. Therefore, if the wagons are allotted to the consignor and the goods are loaded and R.R. is issued on the basis of "said to contain", it is open to the railway administration to weigh the goods at any en route

stations. Further, it is an admitted position that there is no weigh-bridge for weighing railway wagons at the forwarding station and, therefore, even if the railway has to detect the overloading or even for verifying as to whether the loading is within the permissible capacity or prescribed capacity, the only weighbridge available en route at the nearest station is at Virangam. It appears that as per railway administration after the goods are loaded at the forwarding station as and when it passes through Virangam Railway Station since there is available en route weighment, the wagons are weighed and it is checked by the Railway Administration as to whether there is overloading of the wagon or not. In the present case, as per the railway administration the wagons were found to be overloaded on en route weighment at Virangam and there was off-loading of the goods and the penalty which is proposed to be recovered as per the demand notices is for the quantity of the goods which was overloaded and also the off-loading charges of handling of the material etc., as per Section 73 of the Act.

16. Under normal circumstances, if the goods are loaded at the forwarding station by the consignor and R.R. is issued on the basis of "said to contain" and when on en route weighment it is detected by the railway administration that there is overloading, it would be impossible to conceive the situation of applicability of the principles of natural justice at the stage before off-loading of the goods. In a matter where there is huge continuous activity of carrying goods by wagon through railway with the limited tracks available, it would be improper to hold that if overloading is found at the nearest en route weighbridge, the railway administration should not off-load the goods but prior that to, intimation should be given to the consignor of such overloading and after the consignor is heard, the off-loading should take place and till then the wagon should be allowed to remain in stagnant position. Such a situation would not only result into absurdity, but it would result into disruption of the whole railway schedule for passing of various trains including the passenger and goods trains. It would also result into great loss and damage to the public property as well as great loss and damage to the consignor who would be desirous to see that the goods reach to the destination station not only well in time, but as per the scheduled time. If the off-loading is not made immediately of the excess goods from the wagon by the railway administration it may continue to damage the axile and the railway track which would be not only against the interest of the railway, but such cannot be encouraged keeping in view

the maintenance of the safety of all concerned who are using the railway transportation either directly or indirectly. Therefore, if the overloading is detected at the en route station immediately first steps which may be required to be undertaken by the railway administration is to off-load the goods from the wagon to the extent it is overloaded and upto the stage of off-loading of the goods considering the facts and circumstances referred to hereinabove, it appears that the principles of natural justice of prior hearing cannot be made available when the railway administration has to off-load the goods on the ground of overloading.

17. As such the liability to pay punitive rate would accrue the moment it is found by the railway administration that there is overloading of the goods in the wagon. After the off-loading it would be required for the railway administration to immediately intimate the consignor regarding overloading and also offloading of the goods. If such an intimation is given by railway administration to the person concerned the same would enable the consignor to exercise the option through consignee or endorsee at the destination station for weighment as per the Rules of 1990 in the event even such consignor is of the view that there was no overloading at all. Further, such intimation will also enable the consignor to make the payment of punitive charges and charges for offloading of goods in case he wants to avoid the disposal of the offloaded goods by railway administration with a view to realise the punitive charges and also offloading charges etc. Therefore, it appears that at that stage after offloading, there would be applicability of the principles of natural justice to that extent. Such principles of natural justice can further be applied to the extent that the consignor may submit explanation contending that there was no overloading and the material if any available with him to support the said stand and it will be for the railway administration to consider the same and to immediately decide as to whether overloading was there in the wagon or not. However, merely because the explanation is not accepted, the same would not give a cause of action to the consignor to challenge the decision of the railway administration with a view to avoid the payment of punitive rates and other charges as per the scheme of Section 73 of the Act. It further appears that in case the railway administration has not accepted the explanation of the person concerned, the Railway Authority will so intimate to the consignor or the person concerned before actual delivery by forwarding the proof of en route weighment and the collection of the punitive

charges and other charges which are proposed to be recovered before delivery. If the intimation is so given railway administration shall be within its power and right to recover such punitive charges and other charges for off-loading etc. as the case may be before actual delivery of the goods. It goes without saying that in case as per the Rules of 1990 weighment of the consignment at the destination station if it is opted and the option is accepted and upon the weighment of the consignment at the destination station it is found that the goods offered to the consignee or endorsee are less than the quantity of the goods entrusted of carriage, the consignor or consignee or the endorsee, as the case may be would be entitled to set off to that extent and no punitive charges will be recoverable in case if the quantity is found short but the reduction of punitive charges shall be in proportion that to. If ultimately it is found by the railway administration that any punitive charges and other charges for offloading of the materials etc., as the case may be are recoverable, the railway administration shall be within its right to recover the same before its actual delivery. In the event if for one reason or another the delivery is already given, then in that case as observed earlier if the right of lien is not available to the railway in case of non-availability of subsequent consignment, the only option available to the railway administration would be to file appropriate suit for recovery of the amount from the person concerned. However, if as observed earlier right of lien is available, the railway administration may exercise such right on the subsequent consignment of such consignor or consignee or the endorsee as the case may be as per Section 83 of the Act. In case the consignor or consignee or endorsee from whom punitive charges are recovered either before the actual delivery or by exercising right of lien by railway administration and if such consignor or consignee or endorsee is aggrieved by such action of the railway administration, the course available would be to challenge the said action before the appropriate forum. At this stage the reference may be made to Section 86 of the Act which reads as under:

> "Notwithstanding anything contained in this Chapter, the right of sale under Secs. 83 to 85 shall be without prejudice to the right of the railway administration to recover by suit, any freight, charge, amount or other expenses due to it."

18. If the aforesaid provision is read with Section 64(3) and 65(2) of the Act, it appears that the remedy

available to either of the aggrieved parties would be of civil suit for either recovery of the amount or for refund of the amount, but such challenge can be resorted to after the goods are delivered and not prior that to. Therefore, it appears that in normal circumstances as observed earlier the scope of applicability of the principles of natural justice may arise after the off-loading of the goods, but before the actual delivery of the goods. It is required to be observed that unless and until there are extraordinary circumstances so warranting, dispensing with the aforesaid degree of applicability of the principles of natural justice, it is expected for the railway administration to observe the aforesaid principles of natural justice to that extent.

19. However, it appears that in the present group of petitions no proper care is taken by the railway administration to intimate immediately to the consignor or the consignee or the endorsee, as the case may be, after off-loading of the goods at Virangam Station. It has been submitted on behalf of the petitioners that no intimation whatsoever has been given by the railway administration to the petitioners or their counter-parts after off-loading and they have come to know about the same only when the demand notices were received by the petitioners for the first time from the railway administration, whereas on behalf of the respondent railway administration it has been stated by Mr.Yagnik that after off-loading, the intimation was immediately given to all concerned and, therefore, there are disputes regarding the factum of intimation and receipt thereof and its effect thereafter. But even if it is considered that the railway administration had given intimation to the consignor, the fact remains that the punitive charges which as per the statement made by Mr.Yagnik at the bar to the extent that about Rs.15 crore are not recovered by the railway administration before the actual delivery is made at the destination station. It prima facie appears that the aforesaid can be said as a callous and lethargic approach on the part of the officers concerned of railway administration. It is difficult to conclude on the point as to whether the consignor received intimation or not, but in normal circumstances at least the concerned railway authority who has to actually deliver the goods would receive such intimation, had the concerned officers of the railway immediately taken action after detection of overloading of the goods. Ultimately it would be fore he Union of India, Ministry of Railways or Railway Board to examine the matter, but it appears that though the recovery could have been effected of the punitive charges prior to the actual delivery of the goods even as per the

Scheme of Section 73 of the Act, no action is taken for ensuring the recovery and even the demand notices are issued after a period of about one year i.e. much after the actual delivery of the goods.

20. If there is any carelessness found by the Railway Ministry of the Union of India or Railway Board as the case may be of its Officer(s) concerned in not ensuring the recovery prior to the actual delivery resulting into the situation of relegating the railways to file suit for he recovery of the amount, it would be a case to hold an inquiry and to direct the recovery of the amount to the extent of loss caused to the railway administration from the concerned erring officers.

21. There is no dispute on the point that actual delivery is already made of the goods and the demand notices are issued after the actual delivery and the period of about more than one year has passed even before the issuance of demand notices. Therefore, as the stage of applicability of principles of natural justice after off-loading of the goods before the actual delivery of the goods has passed through, and as observed earlier the post decisional hearing has been given by the concerned Officers of Railway as per the order dated 8.7.2002 passed in MCA No.983 of 2002 in SCA No.8939/2001 and allied matters I find that the demand notices issued and its confirmation thereof by the impugned orders which have been passed afresh cannot be quashed on the ground of any breach of principles of natural justice.

22. Mr.Nanavati appearing for the petitioner made an attempt to contend that as the Action Committee for resolving the problems of Gujarat Salt Manufacturers, was not given any hearing, there is breach of principles of natural justice and, therefore, the impugned orders may be quashed. In my view, as observed earlier the degree of principles of natural justice as sought to be canvassed by Mr.Nanavati cannot be equated as that of imposing of penalty of breach of any statutory provision and in any case those salt manufacturers interested to make representations were asked to make representations and some of them have also remained present and the submissions are considered. Therefore, I am not inclined to hold that as the Action Committee which is set as representative body is not heard there is breach of principles of natural justice. Even otherwise also as observed earlier the degree of principles of natural justice is to apply, as applicable in the field of contractual obligations and relations. There would be privity of contract by the Railway qua the consignor and

consequently the consignee or endorsee, as the case may be, and the so-called Action Committee which is claiming as the representative body cannot assert as of right of hearing when the matter is to be considered in the realm of contractual relations and obligation between the Railway and the Consignor of the goods and, therefore, the said contention of Mr.Nanavati cannot be accepted.

23. Much grievance is raised by Mr.Nanavati, learned Counsel for the petitioners for assailing the impugned orders passed by the authorities on the ground that the tare weight of the wagon which is printed on the wagon cannot be the actual tare weight and he submitted that there would be left out material in every wagon and the said left out material is required to be excluded either while considering the fixation of penalty or, in any case, for concluding that the goods loaded are beyond permissible capacity. Mr.Nanavati further submitted that as per the finding recorded by the authority itself there may be a difference of 1 to 3 percentage in the rack because of the left out material and he submitted that if the difference is counted at the rate of 2% then also no penal rate would be leviable.

24. On behalf of the respondent, it has been submitted by Mr.Yagnik that the tare weight would be irrelevant and what is required to be considered is whether there is any overloading beyond its prescribed capacity or permissible capacity as the case may be. He submitted that if the wagon is found to be exceeding the prescribed or permissible capacity there would be overloading and the material is required to be off-loaded.

25. In my view as per the scheme of the Act in normal circumstances the tare weight of the wagon would be printed on the wagon itself. The option is available to the consignor to reject the wagon if as observed earlier he finds that it would be insufficient to load the goods in the wagon or loading of the wagon would result into adverse financial consequence. It is not even the case of the petitioner that in respect to any of the wagons such option was exercised by any of the consignors. Once having accepted the wagon and having loaded the wagon on "said to contain" basis, the burden would lie upon the consignor to prove that there was left out material in the wagon and, therefore, the overloading found is improper. In normal circumstances, once the wagon is found to be overloaded exceeding the permissible capacity, if the consignor is to challenge the action of railway of off-loading the goods and consequently

challenging the recovery of punitive charges etc., it would be for the consignor to prove, who asserts a special circumstances of left out material in the wagon and, therefore, unless and until full-fledged inquiry is held for such purpose it cannot be concluded that finding by the railway administration on overloading of the wagon through electronic method of weigh bridge is incorrect or otherwise.

26. Mr.Nanavati, learned Counsel for the petitioners by taking support of the inspection made by the State Authority, respondent No.6 herein also submitted that the weigh bridge itself of railway was defective and, therefore, the seals were applied by the State Authorities over the weigh bridge and thereafter it is on account of the interim orders passed by this Court the weighbridge was de-sealed. He, therefore, submitted that no reliance can be placed upon the weight which is recorded by the railway administration on its weigh bridge.

27. Mr.Yagnik, learned Counsel for the respondent Railway Administration submitted that as such the weigh bridge was in order and he further submitted that en route weigh bridge for railway wagons was not even included in the schedule of the standard of weights and measures (Enforcement) Act, 1985 and he submitted that the same is included now as per the notification dated 25.7.2001 w.e.f. 23.10.2001, copy whereof is produced at page 142 of the compilation and, therefore, he submitted that there was no authority with respondent No.6 to apply seal and in any event as per the order passed by this Court in SCA No.6883/2001 the seals are removed and the matter is pending before this Court.

28. Mr.Oza, learned GP appearing for respondent No.6 authority submitted that en route weigh bridge of railway can be said as one of the electronic weigh bridges which would be included in the standard Weights and Measures (Enforcement) Act and since the authority found that there is difference of weights the seals were applied and he further submitted that even if the said weigh-bridge is sought to be included w.e.f. 23.10.2001 the authority for verification and its functioning would be with the State officers.

29. On the question of power of respondent No.6 to enforce the provisions of Standard Weights and Measures (Enforcement) Act, I find that it would not be proper by this Court to conclude since a substantive writ petition preferred by the railway administration is pending and

under the interim orders passed by this Court in the said petition, the seals are removed by the State authorities and the weigh bridge is functioning. However, at the relevant point of time whether the weigh bridge was properly functioning or not or whether there was manufacturing defect or functional defect in the weigh bridge or not are the questions which can be concluded only if full-fledged fact finding inquiry is undertaken and merely because some checking is made by the State Authorities in the functioning of the weigh bridge and the seals were applied, it cannot be concluded that the functioning of the weigh bridge was defective at the time en route weighing of material in the wagon was recorded by the railway administration on the basis of which the penalty and other charges are proposed to be recovered. In addition to the above, before accepting the contentions raised by the petitioners for quashing of the demand notices and its confirmation thereof by the fresh orders, it is required to be inquired as to (1) whether the goods were despatched in the standard size bags; (2) whether there was any left out material in the wagons; (3) whether the option was exercised to reject the wagon; (4) whether en route weighing mechanism was in proper condition or was defective; (5) whether the quantum of any penal charges is actual or not; and (6) whether actually any weighment was made at the destination station by the consignee or endorsee or not. Therefore, unless and until all materials are placed on record and full-fledged inquiry is conducted and opportunity is given to lead the evidence and opposite the parties are permitted to cross-examine on the said aspect, no final conclusion can be arrived at that the charges are not recoverable at all by the railway authority on account of overloading of the goods which are proposed to be recovered by the railway administration by the impugned demand notices. As such after full-fledged inquiry , in case the payment is made or the right of lien is exercised by the Railways officers in the subsequent consignment as per Section 83, and if the petitioner establishes the case, the said amount can be ordered to be refunded by the competent Court, but only after the full-fledged in query is undertaken in this regard. It is well settled that this Court while exercising power under Article 226 of the Constitution normally would not undertake the fact finding inquiry, more particularly when there are serious disputed questions of facts which would be required to be examined and concluded before the final relief is granted to the party entitled for such purpose.

30. The petitioners have placed reliance upon the

decision of Gauhati High Court in the case of M/s.Salt Marketing Centre Guwahati (supra), reported in AIR 1996 SC (H), 36, whereby the view taken is that when the railway administration has decided to impose penalty, such reweighment is obligatory and in the opinion of Gauhati High Court, Railway authority is bound to reweigh the goods when asked for. With respect, I am unable to agree with the said opinion, because if such right is read it may result into nullifying the power of the railway authority to disallow the reweighment as per the Rule 4 of Weighment of Consignment (in Wagon Load or Train load) Rules, 1990. Further it appears that it was a case where the goods were lying after off-loading and the matter came up for consideration before this Court and, therefore, the view taken by the Court was to direct the railway authority for such purpose and the said aspect is apparent from para 4 of the said decision. Such is not in he present case and, therefore, as such the said decision even otherwise also cannot be made applicable to the present case.

31. The petitioners have also relied upon the decision of Jharkhand High Court in the case of "Jyoti Enterprises v. Union of India & Ors.", whereby the view taken is that if there is no proper exercise of power, under Section 83 of the Act, even the right of lien cannot be exercised. In view of the observations made by this Court hereinabove for the scope and ambit of the applicability of the principles of natural justice as arising in the realm of contractual obligations and contractual matter and the observations made further, with respect I am unable to agree with view taken by Jharkhand High Court in the aforesaid decision.

32. The last contention raised by Mr.Nanavati on behalf of the petitioners that even in the demand notices and the subsequent orders passed thereafter no details are given by the railway administration regarding prescribed capacity of the wagon, no intimation was given after the off-loading, the calculation of the penalty rate, unloading, charges etc. and in any case, no credit is given of the amount realised of the off-loaded goods deserves consideration. Mr.Yagnik, learned Counsel for the railway is not in a position to dispute that the credit to the extent of the amount realised by disposal of the off-loaded goods qua the concerned salt manufacturers is not required to be given.

33. As observed earlier Railway being one of the departments of the Central Government even in the realm of contractual obligation is expected to act in a just,

fair and reasonable manner. Such just fair and reasonable manner would include intimating to the parties concerned, the basis of penalty, freight, and other consequential charges charged as per Section 73 of the Act. The perusal of the demand notices shows that even the details are not mentioned as to how and in what manner the weight of the good loaded in the wagon exceeded the prescribed or permissible maximum capacity, the calculation of the penalty freight is also not stated, no details are given of the detention charges, nor any credit has been given whatsoever of the amount so realised of the off-loaded goods. Even in the fresh order, which is passed after direction given by this Court as per the order dated 8.7.2002 in SCA No.8939/2001, the reference and the details of general in nature but not qua goods of each of the petitioners concerned and mainly the discussion is in respect to the liability arising therefrom, but no individual details are mentioned. Therefore, I find that in any case, the petitioners would be entitled to (1) the date and time at which the goods were weighed on en route weigh-bridge Virangam; (2) the relevant extract of recording of the weight of the wagon concerned in the weigh bridge (3) the details of permissible capacity of the wagon, the actual weighment as per the weight recorded in the weigh bridge; (4) the details of the weight as per the permissible limit and details of the quantity of the weight of the goods which were off-loaded (5) the date and time at which the goods were off-loaded (6) the intimation, if any, given by railway authority to the consignor or any authorised officer of the consignor in this behalf and/or to the concerned railway authority at the destination station. (7) the basis of the calculation of all the penal freight, the basis of off-loading charges and also the basis of detention charges. After such details are considered, it would be obligatory on the part of the Railway Administration to give credit of the amount so realised of off-loaded goods. In my view, such would be the fair minimum treatment which would be expected by any citizen when he enters into contract with the Railway Administration, a Central Government Body and when the punitive rates are proposed to be recovered under Section 73 of the Act. If the matter is examined accordingly no such details are mentioned even in the demand notices and, therefore, it would be just and proper to direct the Additional Railway Manager who has issued demand notices to give intimation to the petitioners by fresh details as referred to hereinabove and it is only thereafter the punitive charges can be recovered by Railway Administration subject to the observations made hereinabove in this judgement.

34. As this Court in view of the observations made hereinabove is not in a position to undertake a fact finding inquiry unless and until full-fledged opportunities are given to all parties and disputed questions are resolved fully, it would be for the concerned authority/the Court, as the case may be, to finally conclude on the aspect as to whether the demand made by the Railway Administration be decreed or the payment so recovered may be by exercise of right of lien be ordered to be refunded or not and, therefore, since all questions are not concluded and as observed earlier the exercise of right given to Railway under Section 73 cannot be equated as that of imposing penalty for breach of any statutory provisions or enactment, I find that the impugned orders, more particularly the orders which are passed afresh after the order dated 8.7.2002 of this Court in SCA No.8938/2001, cannot be quashed on the ground that some contentions are raised but not dealt with by the authority. As observed earlier, even otherwise also, the matter is in the realm of contractual obligations and the transactions and the exercise of right to recover the amount cannot be equated as that of rendering the decision by quasi-judicial authority and, therefore, the said contention of Mr.Nanavati to that extent cannot be accepted and hence rejected.

35. In view of the aforesaid discussion and with a view to conclude disputes which arise in these petitions following directions deserve to be granted:

1) The relief prayed by the petitioners for quashing of the impugned orders and for directing the Railway Authority not to take coercive steps to ensure recovery for future consignment from the concerned petitioners or the members of the petitioner Committee cannot be granted and, therefore, the same is rejected with only direction that the concerned Railway Authority shall give details and intimation as referred to hereinabove at para 33 which are the basis for the punitive charges to be recovered from the concerned petitioners or consignor, as the case may be. Such exercise shall be undertaken and the intimation thereof shall be given by the Railway Authority to the concerned petitioners within a period of eight weeks from today.

2) After the intimation is given as ordered earlier, the Railway Authority shall be at liberty to recover the amount in accordance with law,

including by exercising the right of lien, if any, as per Section 83 of the Act against the concerned petitioners and in the event no such right of lien is available, it would be open to the Railway Administration to initiate appropriate proceedings for recovery of the amount before the appropriate Court in accordance with law.

3) In the event right of lien is so exercised by Railway Administration against the concerned petitioners in view of Section 83 of the Act, it would be open to the concerned petitioners to challenge the decision and to claim refund of the amount by initiating proceedings in accordance with law before appropriate Court.

36. In view of the aforesaid directions and observations made hereinabove it appears that the injunction which is prayed by the petitioners in Civil Application No.11/2005 in SCA No.14858/2003 is as such beyond the scope of the petition itself, because the subject matter of the petition is the demand notices and the recovery on the basis of such demand notices from the future consignment. In the application the basis of the injunction prayed is the statutory Rules which have been framed by the Central Government known as the Railways (Punitive Charges for Overload of Wagons Rules) 2004 and it pertains to punitive charges to be recovered for overloading of the wagons after the Rules have come into force. In any case, they are not concerned with the subject matter of the petition for which the challenge is made and the grievance is raised by the petitioners. It is well settled that no interim application for the interim relief in the main petition can be allowed to travel beyond the scope of the main petition itself. In any event, in view of the final disposal of the main petitions today and in view of the observations made and the directions given hereinabove, the interim injunction granted on 6.1.2005 deserves to be vacated since the life of the interim order cannot be beyond the life of the main proceedings itself.

37. Mr.Yagnik, learned Counsel for the respondent Authority is right in submitting that when the Rules itself are not in challenge the operation of the statutory rules cannot be stayed by interim relief, but I find that it is not necessary for this Court to conclude on the said aspect since the main petition itself is decided today. However, if at the final outcome, interim injunction is vacated or any party to the proceedings has

taken benefits of the interim order for the period during which the interim order was in operation and if at the final out come of the petition this Court finds that relief to that extent on the basis of which the interim order was granted earlier is not required to be granted, the benefit so enjoyed from the interim order deserves to be restored or in alternative the appropriate observations deserve to be made by the Court qua the rights of the parties which have accrued during the life of the said interim order. It appears that on 6.1.2005 the interim orders were passed and today when the matters are decided, even if the law permits recovery of the amount before the actual delivery by the Railway Administration from the persons concerned, the recovery could not have been affected and, therefore, while vacating the interim injunction granted earlier including injunction dated 6.1.2005 granted in Civil Application No.11/2005 in SCA No.14858/2003 it deserves to be observed that in case the penalty charges are leviable as per the Rules known as Railways (Punitive Charges of Overload of Wagon Rules) 2004 and are not recovered by the Railway before effecting delivery, it would be open to the Railway Administration to recover the amount for such purpose, if any, in light of the observations made in this judgement by giving intimation and the details as referred to earlier.

38. The petitions are partly allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

39. The office shall also send a copy of this order to Respondent No.1, General Manager, Western Railway, who is additionally directed to send a copy of this order to the Ministry of Railway, Central Government and also Railway Board to issue necessary instructions in this regard and also to take appropriate action against the erring Officers as observed in this judgement.

12.1.2005 (Jayant Patel, J.)

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